

1  
2  
3  
4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

6 \* \* \*

7 UNITED STATES,

8 Plaintiff,

9 v.

10 DANIEL WALTER SYDOW,

11 Defendant.

Case No. 2:15-cr-00214-RFB

**ORDER**

12  
13  
14 Before the Court is the government's Motion for Competency Determination [ECF No.  
15 82]. The Court GRANTS that Motion and hereby issues its finding as to Mr. Sydow's  
16 incompetence to proceed to trial. This Order is intended to trigger the procedure in 18 U.S.C. §  
17 4246.

18  
19 **I. BACKGROUND**

20 On July 22, 2015, a grand jury indicted Sydow for one count of Bank Robbery in  
21 violation of 18 U.S.C. § 2113(a).

22 At a July 30, 2015 hearing, Sydow was referred for a competency evaluation. On  
23 November 12, 2015, after the Court found Sydow competent to proceed to trial, a trial date was  
24 set for December 9, 2015. Sydow's counsel then filed a sealed motion for a competency hearing.  
25 The Court granted that motion in chambers on May 10, 2016. The Court denied the  
26 Government's May 13, 2016 emergency motion for a follow-up competency evaluation. The  
27 Court subsequently held a hearing and determined that Sydow was incompetent to stand trial. On  
28

1 June 28, 2016, this Court issued an order that Sydow be “committed to the custody of the  
2 Attorney General in accordance with 18 U.S.C. § 4241(d).”

3 On November 3, 2016, Sydow arrived at FMC Springfield and began receiving treatment.  
4 Sydow underwent treatment and evaluation in Springfield. The psychologist treating Sydow  
5 produced a July 21, 2017 report (the “July 21 Report”) on Sydow’s current treatment and  
6 competency to stand trial. The July 21 Report advised that Sydow was not competent to stand  
7 trial, but the treating psychologist requested an additional ninety-day period in which to continue  
8 treating Sydow in an effort to restore him to competency. On August 2, 2017, the Court held a  
9 hearing on several motions. At the hearing, the Court provided counsel for the Government and  
10 Sydow a copy of BOP’s July 21, 2017 report. The Court found at the hearing that Sydow could  
11 not be restored to competence as contemplated by Section 4241 and rejected the treating  
12 psychologist’s request for an additional ninety-day period to treat Sydow.

## 13 14 **II. LEGAL STANDARD**

15 The determination of competency under federal law proceeds under 18 U.S.C. § 4241.  
16 Section 4241 authorizes a court to order the detention of a criminal defendant for purposes of  
17 competency evaluation and the production of a competency report. Id. If the court makes an  
18 initial determination that a defendant is not competent then Section 4241(d) authorizes the court  
19 to order that the defendant be hospitalized to receive further treatment to determine if he can be  
20 restored to competence. Id. If after four months or such other time period the court authorizes  
21 pursuant to the statute, the court determines that “mental condition has not so improved as to  
22 permit the proceedings to go forward, the defendant is subject to the provisions of sections 4246  
23 and 4248.” Id.

24 Title 18 United States Code, Section 4246, which governs “[h]ospitalization of person  
25 due for release but suffering from mental disease or defect,” provides that a dangerousness  
26 hearing occurs only if the director of the facility treating the defendant first certifies that: (1) the  
27 defendant is presently suffering from a mental disease or defect; (2) due to that defect/disease,  
28 the defendant’s release would create a substantial risk of bodily injury or serious property

1 damage to another person; and (3) suitable arrangements for State custody and care of the person  
2 are not available. 18 U.S.C. § 4246(a).

3 If the facility director certifies those three facts, the certificate must be “transmit[ted]” to  
4 the clerk of the “court for the district in which the person is confined.” Id. The clerk of that  
5 district court must then “send a copy of the certificate” to the defendant, the Government  
6 attorney, and the clerk of the district court that “ordered the commitment” “pursuant to section  
7 4241(d)[.]” Id. At that point, the district court in which the person is confined “shall order a  
8 hearing to determine whether the person is presently suffering from a mental disease or defect as  
9 a result of which his release would create a substantial risk of bodily injury to another person or  
10 serious damage to property of another.” Id. A district court does not have statutory authority to  
11 conduct a dangerousness hearing under § 4246 unless the director has first filed a certification.  
12 United States v. Lapi, 458 F.3d 555, 562 (7th Cir. 2006) (“§ 4246 is triggered only by the filing  
13 of a Certificate of Mental Disease or Defect and Dangerousness by the ‘director of [the] facility  
14 in which [the defendant] is hospitalized’”); United States v. Baker, 807 F.2d 1315, 1324 (6th Cir.  
15 1986) (“[B]y failing to adhere to the [certification] procedures outlined in section 4246, the  
16 district court lacked statutory authority to commit Baker.”)

### 17 18 **III. DISCUSSION**

19 The Court finds that Mr. Sydow is not competent to proceed to trial pursuant to Section  
20 4241. The Court incorporates by reference its previous findings and reasoning in earlier hearings  
21 on the issue of competency.

22 The Court further bases its determination of incompetence on the Bureau of Prison’s July  
23 21 Report—which is filed in the sealed portion of the docket. This Report found that Sydow was  
24 not competent to proceed to trial. The Court concurs and adopts the findings of the Report as to  
25 the reasons why Sydow is not competent to proceed to trial. The Court will not quote from the  
26 details of the Report to protect Sydow’s privacy regarding his medical condition in this public  
27 order. The Court simply summarizes its findings by noting that the delusional beliefs of Sydow  
28

1 and their historical prevalence in his mental health history render him incompetent to proceed to  
2 trial.

3 The Court, as noted at the prior hearing, does not find that Sydow can be shortly restored  
4 to competence. The nature of Sydow's delusional beliefs and the fact that he has maintained  
5 these beliefs even in the face of treatment for an extend period of time do not support the  
6 conclusion that he can likely be restored to competence. Indeed, it is likely that he has actually  
7 been incompetent for some time.

8  
9 **IV. CONCLUSION**

10 For the reasons noted, the Court finds pursuant to 18 U.S.C. §4241 that Mr. Sydow is not  
11 competent to proceed to trial and cannot be restored to competence. The case will be referred to  
12 the Western District of Missouri for further proceedings pursuant to 18 U.S.C. §4246.

13  
14 Accordingly,

15 **IT IS HEREBY ORDERED** the Court finds pursuant to U.S.C. § 4241 that Mr. Sydow  
16 is not competent to proceed to trial and cannot be restored to competence.

17 **IT IS FURTHER ORDERED** that the Clerk of Court shall convey this Order to the  
18 warden or director of the Bureau of Prison's medical facility—USMCFP Springfield in  
19 Springfield, Missouri—where Mr. Sydow is currently hospitalized.

20 **IT IS FURTHER ORDERED** that this case is hereby referred to the Western District of  
21 Missouri, where Mr. Sydow is detained and hospitalized, for further proceedings pursuant to 18  
22 U.S.C. § 4246. The Clerk of Court will convey this Order to the Clerk in the Western District of  
23 Missouri so the case may be assigned as appropriate in that District.

24  
25 DATED October 23, 2017.

26  
27  
28 

---

**RICHARD F. BOULWARE, II**  
**UNITED STATES DISTRICT JUDGE**